

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEON E. MARTIN,	§	
	§	No. 48, 2006
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for Kent County
	§	Cr. I.D. No. 0505014643
Plaintiff Below,	§	
Appellee.	§	

Submitted: July 26, 2006
Decided: September 19, 2006

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 19th day of September, 2006, on consideration of the briefs of the parties,
it appears to the Court that:

1) Deon E. Martin appeals from his convictions, following a jury trial, of burglary second degree, menacing and criminal mischief. He argues that the trial court abused its discretion in denying his motion for a mistrial after a witness mentioned that he was on probation. We find no merit to this argument, and affirm.

2) On May 20, 2005, Ronald Seney was at home with his girlfriend, Mary Thompson, and some other people, when Martin started pounding on the door, demanding to be let in. Martin kicked the door open. He was carrying a black

handgun, and he told Seney not to move or Martin would kill him. Martin was looking for a person named “JJ,” who was not in the house. Martin checked all the rooms, and as he was leaving, told Seeney not to call the police or Martin would come back and kill him. Seney waited about 15 minutes and then called the police. The police found Martin across the street from Seney’s house and arrested him. The police did not find a weapon, but did find a black, square cell phone.

3) At trial, Seney and Thompson gave consistent testimony about the events of that evening. In response to a question about “what happened then,” Thompson testified that Martin said, “Don’t call the police, I’m on probation, or I’ll kill you....” Martin objected to the reference to probation and asked for a mistrial. After a colloquy with the prosecutor, the trial court found that the witness’s inappropriate comment was inadvertent. The trial court denied the motion for a mistrial, but gave a curative instruction.

4) Martin argues that the reference to his probationary status irreparably prejudiced the jury and that a curative instruction could not counteract that prejudice. We disagree. “This Court has repeatedly held that even when prejudicial error is committed, it will usually be cured by the trial judge’s instruction to the jury to

disregard the remarks.”¹ Jurors are presumed to follow the court’s instruction,² and the fact that the jury returned not guilty verdicts on several of the charges in this case tends to establish that Martin was not prejudiced by the inappropriate reference to probation.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court be, and the same hereby are, AFFIRMED.

BY THE COURT:

/s/Carolyn Berger
Justice

¹*Pennell v. State*, 602 A.2d 48, 52 (Del. 1991).

²*Shelton v. State*, 744 A.2d 465, 483 (Del. 2000).